D.B.CIVIL SPECIAL APPEAL NO. 1056/2006

State of Rajasthan & anr.
v.
Sobha Ram Dangi

Date of order : 24.04.2007.

HON'BLE THE CHIEF JUSTICE SHRI S.N.JHA
HON'BLE SHRI JUSTICE MOHAMMAD RAFIQ
. . .

Shri H.V.Nandvana, Dy. Govt. Advocate
Shri V.K.Joshi for the respondent.

This special appeal is directed against the order of the learned Single Judge allowing the writ petition of the respondent with a direction to the appellants to consider the claim of the respondent for semi-permanent and permanent status on the post of clerk in accordance with rule 3(2) and (3) of the Rajasthan Work-charged Employees Service Rules, 1964.

Shri H.V.Nandvana, learned counsel for the appellants, submitted that the direction of the learned Single Judge is contrary to the decision of the Supreme Court in State of Rajasthan & ors. v. Mahender Kumar Thanvi, AIR 1999 SC 3365. That was a case of absorption on the post of regular LDC. The Supreme Court held

that post of LDC is Class III post falling within the purview of State Public Service Commission. The respondent had appeared at the competitive examination conducted by the Public Service Commission but failed and was therefore, not selected. Thereafter he worked as Beldar on daily wages for period of three years and then as casual worker. In the circumstances it was held that merely because he was allowed minimum pay of pay scale of post of regular LDC on grounds of equal pay for equal work he cannot be considered for regularisation. The decision lends no held to the appellant for the simple reason that the claim was not considered in the context of Work-charged Employees Service Rules, rule 3 whereof specifically lays down that employees who have been in service for ten years or more shall be eligible for the status of permanent work-charged employees, and those in continuous service for two years or more shall be eligible for the status of semi-permanent work-charged employees provided their record of service in the opinion of the competent authority is satisfactory.

It was then submitted that in terms of rule 3 a person simply becomes eligible for being conferred the status of permanent/semi-permanent work-charged employee, and therefore, merely on the ground that the person has worked for ten years' or two years' , as

the case may be, he cannot claim status of permanent/semi-permanent employee as a matter of right. The submission is undoubtedly well founded but does not take the case of the appellant any far. It is manifest that the conferment of the status of permanent/semi-permanent employee is dependent on the satisfaction of the competent authority regarding satisfactory record of service. It is the admitted position that there was nothing amiss in the service record of the respondent, and therefore the record being satisfactory, the conferment of the status of permanent/semi-permanent cannot be denied to him.

Counsel lastly submitted that the direction of the learned Single Judge to confer the status of permanent/semi-permanent on the post of clerk cannot be implemented, for there is no post of clerk in the work-charged establishment. Counsel however agreed in course of hearing that the engagement of the respondent was on the post of clerk and he was working as such post. We are of the view that if the post of clerk as such is not available, the respondent can be adjusted against the equivalent post of Store Munshi or Munshi or any other post carrying the same pay scale. By the order impugned the learned Single Judge merely directed conferment of status of permanent/semi-permanent on the

respondent and nothing more. We clarify that it is open to the appellants to confer the status of semi permanent/permanent on the respondent in terms of rule 3 of the Work-charged rules on the post equivalent to the post of clerk in the same scale of pay.

With this clarification the appeal is dismissed.

(MOHAMMAD RAFIQ), J. (S.N.JHA), C.J.

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